IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.A. No.44/2001

Reserved on.28.12.2007

Decided on.31.12.2007

State of H.P. **…Appellant.**

Versus

Durga Singh. **…Respondent**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*. No.*

For the Appellant : Mr. V.K. Verma, Addl. Advocate General

For the respondent Mr. Ajay Sharma, Advocate.

Rajiv Sharma, J.

The respondent was prosecuted in criminal case No.57-II/97 in the Court of Additional Chief Judicial Magistrate, Nurpur, H.P. for offences punishable under sections 279 and 304-A of the Indian Penal Code and was acquitted on 1.10.1999 by the trial court. The State has filed this appeal against the acquittal of the respondent-accused.

The brief facts of the case are that on 2.4.1996 at about 7.30 A.M. near Jassur, the respondent-accused drove the bus bearing No. HP-38-2404 on a public highway rashly and negligently and dashed it with the tractor bearing No.PBG-2823 as a result of which Didar Singh, who was sitting in the tractor fell down and died. The matter was reported to the police on the basis of which FIR was registered. The investigation was carried out and the challan was put against the respondent-accused. In order to prove its case, the prosecution examined as many as 10

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

witnesses. The accused was examined under section 313 of the Code of Criminal Procedure.

The learned Additional Advocate General had strenuously argued that the prosecution has proved the case beyond reasonable doubt.

Mr. Ajay Sharma, Advocate had supported the judgment dated 1.10.1999.

I have heard the learned counsel for the parties and have gone through the record of the case.

PW-2 Shri Balbir Singh has stated that the bus was being driven at the time of accident by the accused. However, he has admitted that he was driving the tractor trolley loaded with Turi and was coming towards Jassur when the bus bearing HP No. 38-2404 hit the tractor. As per the statement of PW-2, Balbir Singh, the driver of the bus did not stop the bus at the place of accident; rather he went to Jassur and stopped the bus at the Bus Stand. According to PW-2 he went to Raja-Ka-Talab, where the Turi was unloaded by the police and payment was made to them. Since PW-2 never went to the Bus Stand, rather he went to Raja-ka-Talab where Turi was unloaded, it can be presumed that he did not see the accused driving the bus. PW-3 Harbans Singh has also not stated that the accused was driving the bus at the time of accident. In the statement recorded under section 154 of the Code of Criminal procedure, PW-2, Balbir Singh had stated that when the bus hit the tractor, deceased Didar Singh fell down and he was crushed by the tyre of trolley. In his statement on oath he has nowhere stated so. There is no evidence on record to suggest that the bus was being driven rashly and negligently by the accused-respondent. It is also doubtful whether the witnesses have seen the accused driving the bus. The trial court after correctly appreciating the evidence had acquitted the accused vide judgment dated 1.10.1999.

In view of the observations made hereinabove, this Court will not interfere in the well reasoned judgment of the learned Addl. Chief Judicial Magistrate, Nurpur acquitting the respondent on 1.10.1999.

Consequently there is no merit in the appeal and the same is dismissed. The bail bonds furnished by the accused are discharged.

(Rajiv Sharma), Judge

December 31, 2007
Awasthi